

# CRB

## (DRAFT) MINUTES (DRAFT)

Citizen Review Board Meeting  
Old City Hall, 510 Greene Street

**Monday, March 22, 2010**

**6:00 p.m.**

1. MEETING CALLED TO ORDER AT 6:00 P.M.

2. ROLL CALL

BOARD MEMBERSHIP/AGENTS PRESENT:

Dr. Bryan Green

Virginia Altobello

Dr. Mark Kielsgard

Hayward Magby

Susan Srch

Robert Cintron, Attorney for the Board

Stephen Muffler, Executive Director of the Board

Inspector Randy Smith-KWPD/IA

ADDITIONAL ATTENDEES:

Anthony Capo

Shahdaroba Rodd

John Carris

**(others in attendance did not sign in)**

3. PLEDGE OF ALLEGIANCE

4. APPROVAL OF MINUTES:

a. February 22, 2010

Sue Srch and Virginia Altobello pointed out that the Motion on the Omar Brown File mentioned in the minutes was seconded by Virginia Altobello and not Sue Srch and requested that to be changed.

**Board Consented to the Minutes being modified as such, and approved without any objections.**

5. TRACKING CHART REVIEW

Inspector Randy Smith stated that IA was awaiting legal guidance on CRB #09-008.  
No other comments.

## 6. CONTINUED OR NEW BUSINESS

Dr. Kielsgard recommended that the Board address CRB case #10-002 first because it was not as involved/complicated as the other two (2) other files pending before the CRB that night. The Board generally agreed to hear the cases in that manner.

### a. Capo CRB Case No. #10-002

Virginia Altobello briefed the Board on the facts and allegations in the complaint and Board materials. Mr. Capo addressed the Board and felt that he was not disturbing the church service and the service was over when he was protesting outside. Mr. Capo explained he was outside, across from the church and exercising his 1<sup>st</sup> Amendment rights. Mr. Capo stated that he felt that the KYPD responding officer was harassing him because he was told his signs were causing the disturbance with their content. He feels this is an ongoing event with the KYPD and feels that it constitutes harassment since this has been occurring for about 2 years now.

Chairman Green explained to Mr. Capo that the Board will not interpret any conflict between Florida statutes and the 1<sup>st</sup> Amendment and that the Board will only examine the subject officer's conduct. Dr. Kielsgard & Sue Srch explained to Mr. Capo that he could have challenged the law in court by: 1) being arrested and bringing the matter up in his defense as a case of civil protest; or 2) hiring an attorney and suing to have the subject Florida Statute invalidated. The Board members generally agreed that the allegations, which were not in contest or dispute, did not constitute professional misconduct by the officer who was just enforcing the law.

**Motion by Dr. Mark Kielsgard and seconded by Sue Srch that the Board make a finding of EXONORATED as to the charge of harassment against Officer Sellers.**

**PASSES: Unanimously.**

### b. Rodd CRB Case No. #09-009

Chairman Green explained the facts and allegations in the complaint and Board materials and explained all the charges were either dropped by the prosecutor and Mr. Rodd was found NOT GUILTY of riding a bike without a white light. Members debated as to if there was any justification for the original stop of Mr. Rodd by Officer Leahy. Chairman Green pointed out that officer Sanchez's report and the crash report (authored by a different officer) conflict as to why Officer Leahy initiated the stop in the first place and Officer Leahy's apparent statements to fellow officers.

Chairman Green pointed out that there were 5 (five) officers at the scene, blocking traffic on Duval, spending about 10 hours total on this event which seemed like a disproportionate response. The Board members generally agreed, in light that all the charges were dismissed or dropped by the prosecutor for various reasons. Further, Mr. Rodd was found Not Guilty on the ticket citation of riding a bike without a white light and the bike was lit up with considerable Christmas lights as the I-COP showed.

Dr. Kielsgard suggested to the Board that the charge of false arrest be addressed first on this particular file as a proper way to manage all the issues and charges in both files. Dr. Kielsgard felt that there was not enough evidence for the false arrest charge, but clearly enough evidence for deficient service by Officer Sanchez because he issued a "Boating Under the Influence" (BUI) ticket to Mr. Rodd citing the wrong Florida statute. Further, officer Sanchez's police reports had multiple errors. The Board members generally agreed that Officer Sanchez's performance feel short in light of the foregoing and he is considered the DUI expert on the force.

**Motion by Dr. Mark Kielsgard and seconded by Virginia Altobello make a finding of SUSTAINED as to the charge of Deficient Service based upon the issuance of the BUI and other inaccuracies in his police reports and NOT SUSTAINED on the charge of false arrest against Officer Sanchez.**

**Passes: Unanimously**

Board entertained the allegation of untruthfulness against Officer Leahy. Dr. Kielsgard felt that Officer Leahy made material misrepresentations to the officer investigating the crash and who authored the crash report at the onset. Dr. Kielsgard referred to the I-COP video and audio from various units documenting Officer Leahy's statements. Officer Leahy took the position that he DID NOT bump into Mr. Rodd's bicycle. Dr. Kielsgard pointed out that an independent third party made a statement that Officer Leahy's vehicle struck Mr. Rodd's vehicle. Sue Srch agreed and pointed out that the reports show different versions as to what Officer Leahy saw at the onset with his encounter and for stopping Mr. Rodd originally. Dr. Kielsgard was concerned the Chief of Police did not even consider this matter serious enough to open up an investigation, nor the other companion file which all raised serious issues/allegations in his mind.

**Motion by Sue Srch and seconded by Dr. Mark Kielsgard moves to SUSTAIN the allegation of untruthfulness against Officer Leahy.**

**Passes: Unanimously**

Board discussed the charge of untruthfulness against Officer Sanchez. The Board generally felt that Officer Sanchez's conduct, although rising to the level of deficient service given he is a DUI expert on the KYPD, did not rise to the level of untruthfulness in this file.

**Motion by Dr. Mark Kielsgard and seconded by Sue Srch for a finding of NOT SUSTAINED as to the charge of untruthfulness against Officer Sanchez.**

**Passes: Unanimously**

Board discussed the allegations of conspiracy against the involved officers. Dr. Mark Kielsgard felt that there was no intent to conspire by the involved officers to violate the KYPD standards/rules. Mr. Rodd stated to the Board that since Officer Leahy knew he crashed into Mr. Rodd, Officer Leahy wanted to make him (Mr. Rodd) the "bad guy" by charging Mr. Rodd with various improper charges. Sue Srch did not feel that there was enough evidence for a finding of conspiracy.

**Motion by Sue Srch and seconded by Mark Kielsgard for a finding of NOT SUSTAINED as to the charge of conspiracy.**

**Passes: Unanimously**

Chairman Green reiterated the general concern that Officer Sanchez was considered the DUI expert and that Officer Sanchez apparently does not seem to know the law in this area as applied to bicycles as well as he should. This concerned Chairman Green as it reflected that the level of training at the KWPD was not up to acceptable standards as related to DUI/Bicycle stops.

**c. Rodd CRB Case No. #10-001**

Chairman Green explained the facts and allegations of the complaint and the Board materials to the Board and that the only charge that Mr. Rodd WAS found GUILTY of, was riding a bicycle without a white light. Mr. Rodd felt that the entire arrest and events of that night were based on revenge by Officer Sanchez. Mr. Rodd was only found guilty of not having a white light on the bicycle.

Dr. Kielsgard felt that there is evidence to support the allegation of “false charge/arrest” for Mr. Rodd’s violation of the “implied consent” law since no such charge is legal under Florida law as the “implied consent” is not applicable to a suspected intoxicated bicycle rider and this charge was dropped by the prosecutor. Sue Srch and Dr. Kielsgard explained that you don’t need a license to ride a bicycle and thus you do not give “implied consent” to a breathalyzer test and thus cannot be charged with that. Sue Srch and Dr. Kielsgard felt that there is no valid charge for failure to submit to a breathalyzer in this case and this constituted sufficient evidence for “false arrest/charge” by Officer Sanchez.

**Motion by Dr. Mark Kielsgard and Seconded by Virginia Altobello for the finding of SUSTAINED as to the charge of False Arrest against Officer Sanchez based on the charge of failure of Mr. Rodd to consent to take a breathalyzer.**

**Passes: Unanimously**

Mr. Rodd feels that this constitutes harassment as it is related to the prior file/complaint just discussed by this Board. He feels that Officer Sanchez was undertaking some form of retaliation against him. Mark Kielsgard feels that when you look at Mr. Rodd’s prior string of complaints with the CRB in the past year, in light of these this amounts to harassment.

Virginia Altobello was concerned about the hours dedicated by Officer Sanchez in arresting and processing Mr. Rodd in light of Fantasy Fest Week. Virginia Altobello was concerned that Officer Sanchez was thus unavailable to handle any possible serious events that could have occurred that night (if any where to occur). Virginia Altobello felt that this officer should have used his discretion and handled the matter differently and thus not being tied up with such a minimal charge during this very busy night. Virginia Altobello was also concerned that Officer Sanchez was under scrutiny with his prior I-COP

inadequacies (in the Univar File) in operating that system and Officer Sanchez does not operate the rear view of the video in this file when transporting Mr. Rodd to prison nor does the I-COP video capture the subject bicycle without alleged white light on the scene.

Virginia Altobello was also concerned that Officer Sanchez was speaking Spanish on the phone, apparently addressing the processing of Mr. Rodd or other official business, while Mr. Rodd sitting in custody next to Officer Sanchez at the jail. Sue Srch stated this was not acceptable conduct by an officer who is processing a prisoner and discussing the matter in front of the prisoner on the phone in that way. Hayward Magby felt that speaking another language was not that relevant to the case or charge and that should not really be an issue here.

Trice Denny felt that Mr. Rodd had put himself in these situations with his own conduct and drinking habits and other Board members generally agreed. Chairman Green felt that this is patent harassment by Officer Sanchez in light of the DUI video at the jail house and Officer Sanchez's actions. Chairman Green feels that the KWPD should do better than this.

**Motion by Mark Kielsgard and seconded by Sue Srch of the finding of harassment by Officer Sanchez**

**Yeas: Green, Virginia, Mark Kielsgard and Sue Srch**

**Neas: Trice & Hayward**

**Motion Passes:**

Attorney Cintron points out that he would have to check the Union bargaining agreement before the Board makes any recommendations of discipline as these charges and findings are material in nature. Board felt that they would not make any recommendations at this point and put this matter on the next meeting and re-notice the involved party and officers so they can contemplate the level of recommended discipline against Officer Leahy and Officer Sanchez.

#### 7. COUNSEL'S REPORT

NONE

#### 8. CHAIRMAN'S REPORT

Chairman Green announced that he would not be seeking a 3<sup>rd</sup> term as Chairman and encouraged the Vice Chair to assume the position if elected to do so in June 2010. Chairman Green also announced his intention NOT to renew his term in June 2011.

#### 9. BOARD MEMBERS REPORT/GENERAL COMMENTS

Dr. Mark Kielsgard announced that he is stepping down when his term ends in May 2010. He is relocating overseas.

#### 10. EXECUTIVE DIRECTOR'S REPORT

- a. Executive Director explained that the Quarterly Newsletter will go out April 1, 2010.
- b. Executive Director explained that he conducted a ride-along over Spring Break and other officer interactions and encouraged members do ride-alongs
- c. Executive Director explained how the search for the upcoming 3 vacancies on the Board would be advertised and filled.

#### 11. PSO/IA COMMENTS/FOLLOW-UP

#### 12. PUBLIC INPUT

Mr. Carris explained that he is not here to criticize, but to encourage the Board to address the various questions and issues dealing with the KWPD. Mr. Caris explained that the Board exists because of the public's lack of confidence in the KWPD. Mr. Caris felt that Mr. Cintron is trying to throw a wrench in the CRB process.

#### 13. MEDIA AND PRESS QUESTIONS

NONE

#### 14. ADJOURNMENT

Adjourned at 8:15 p.m.

Respectfully Submitted

---

Stephen C. Muffler, Esquire  
Executive Director